

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARREN NELSON,	§
	§ No. 107, 2016
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
STATE OF DELAWARE,	§
	§ Cr. ID Nos. 1008004760 and
Plaintiff Below-	§ 1305006068
Appellee.	§

Submitted: May 3, 2016
Decided: June 29, 2016

Before **STRINE**, Chief Justice; **VAUGHN**, and **SEITZ**, Justices.

ORDER

This 29th day of June 2016, after careful consideration of the appellant's opening brief, the State's motion to affirm, and the record on appeal, it appears to the Court that:

(1) The appellant, Darren Nelson, filed this appeal from two Superior Court orders, dated February 23, 2016 and March 18, 2016, denying his motions for modification of sentence. The State has filed a motion to affirm the judgments below on the ground that it is manifest on the face of Nelson's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Nelson pled guilty in November 2010 to one count each of Endangering the Welfare of a Child and Rape in the Fourth Degree. He was sentenced to a total period of ten years and six months at Level V incarceration, with credit for 92 days previously served, to be suspended after serving six months in prison for five years at Level III probation. As part of the sentence, the Superior Court ordered Nelson to complete a sexual disorders treatment program. In April 2013, Nelson was discharged from the program for failing to attend required group therapy. In October 2013, Nelson pled guilty to one count of Theft and was sentenced to one year at Level V incarceration, to be suspended immediately for one year at Level II probation.

(3) In September 2013 and again in October 2013, the Superior Court adjudged Nelson guilty of violating the terms of his probation. Nelson appealed the Superior Court's October 2013 VOP adjudication and sentence. We affirmed the Superior Court's judgment.¹ In August 2015, the Superior Court found Nelson guilty of his third VOP and sentenced him to a total period of nine years at Level V incarceration, to be suspended upon successful completion of a sex offender program, for decreasing levels of supervision. Nelson did not appeal that VOP finding and sentence. Instead,

¹ See *Nelson v. State*, 2014 WL 1365822 (Del. 4, 2014) (affirming the Superior Court's judgment on Nelson's second VOP).

he filed a motion for modification of sentence in November 2015, which the Superior Court denied. Nelson did not appeal. In February 2016, Nelson filed two more motions for modification of sentence, which the Superior Court denied on February 23, 2016 and March 18, 2016. This appeal followed.

(4) Nelson raises three issues in his opening brief on appeal. First, he contends that the Superior Court's order sentencing him on his third VOP for Rape in the Fourth Degree is an illegal, indefinite sentence because it requires him to complete a treatment program before release, but he has been waiting for placement in a program for more than eight months. Second, he contends that the Superior Court sentenced him for his third VOP with a closed mind. Third, he argues that the Superior Court sentenced him based on false information.

(5) With respect to the second and third issue, Nelson did not argue either point to the Superior Court in the first instance. Thus, we will not consider these arguments for the first time on appeal.² Moreover, there is no merit to Nelson's contention that the Superior Court sentenced him to an illegal, indefinite sentence for Rape in the Fourth Degree. The Superior Court sentenced Nelson to a definite term of eight years at Level V

² Del. Supr. Ct. R. 8 (2016).

incarceration. Successful completion of the sex offender program merely affords Nelson the possibility of obtaining early release from his eight-year prison term to a reduced level of supervision.³

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Collins J. Seitz, Jr.
Justice

³ *Whitehair v. State*, 2006 WL 298162, at *1 n.9 (Del. Feb. 6, 2006).